FILE COPY

JAN 19 193
CHARLES ELMORE CR

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 432.

WILLIAM E. LAMB, *Petitioner,*

vs.

STERLING B. CRAMER, ET AL, *Respondents.*

REPLY BRIEF ON BEHALF OF PETITIONER.

EDWARD B. BURLING,
EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

	Page
REPLY TO POINT I OF RESPONDENTS' BRIEF	3
REPLY TO RESPONDENTS' POINT II	5
REPLY TO RESPONDENTS' POINT III	8
REPLY TO RESPONDENTS' POINT IV	9
REPLY TO RESPONDENTS' POINT V	9
REPLY TO RESPONDENTS' POINTS VI, VII, AND VIII	12

TABLE OF CASES CITED.

Blake v. McKim, 103 U. S. 336	7
Chiles, In Re, 22 Wall. 157, 168	8
Hyde v. Ruble, 104 U. S. 407	7
Liebing v. Matthews, 216 Fed. 1, 11-12	7
Miller v. Sherry, 69 U. S. 237, 250	14
Peninsular Iron Co. v. Stone, 121 U. S. 631	7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 432.

WILLIAM E. LAMB, *Petitioner,*

vs.

STERLING B. CRAMER, ET AL, *Respondents.*

PETITIONER'S REPLY BRIEF.

Respondents' brief is replete with inaccurate statements concerning the record in the present case. Ultimately the record itself must be examined in order to ascertain precisely what proceedings were had in the District Court, but as an aid to this Court we should like to indicate briefly a number of the more important inaccuracies. Respondents repeatedly assert that the present case originated as a supplemental proceeding in an equity suit. (Respondents' Brief, pp. 2, 3, 4, 8) Inasmuch as this is one of the principal issues on the present review, the bare assertion adds nothing to the argument. This conclusion is repeated in the assertion that the final decree reserved a hearing on the "supple-

mental petition'' (pp. 3, 15, 41). This decree did not refer directly to the petition against Lamb. The Court did reserve jurisdiction of the cause to make such further orders as might be required and which might be found necessary for the creation, preservation, and/or disposition of the relative rights of the several parties to the suit. (R. 134, 138) Similarly, it is stated (pp. 4, 24, 41) that the hearing on the ''supplemental petition'' was set by consent for June 9th. The order setting the hearing referred to it as a hearing on the citation and did not refer to any supplemental bill. (R. 146)

Respondents state (p. 5) that the hearing on the petition and order to show cause was only on the motion to quash. The Court's order (R. 175) recites that the case came on to be heard upon the petition as well as upon the motion to quash. It is likewise asserted that the Circuit Court of Appeals ruled upon the petition as a supplemental bill (p. 7). As we have pointed out in our main brief, the opinion of the Circuit Court of Appeals affords no basis for any such conclusion.

It is stated that the Government intervention was pending throughout the entire creditor's suit until the date of the final decree. (Respondents' brief p. 40) This intervention was dismissed on April 19, 1930, by order of the court on application of the Government, eleven days before the final decree. Therefore since this Government claim was never brought to a successful conclusion, no equitable lien for the amount of the claim ever existed.

Finally, Respondents repeatedly assert that the sole ground for the action of the District Court was its belief that Lamb was immune from service. (Respon-

dents brief pp. 5-6, 35-36, 44) As we have stated in our main brief, this mistaken assumption was first introduced by Respondents in their objections to the inclusion of certain portions of the record. (R. 192) There is not the slightest indication in the proceedings in the lower court which remotely supports this mistaken assumption.

In our original brief we endeavored to simplify the issues raised on a record confused by unconventional and irregular pleadings and by misconceptions entertained by the Court of Appeals as to the issues involved. We showed that the case presents two main questions: *first*, whether the petition was sufficient to charge Lamb with contempt of any sort; and, *second*, whether, if bad in that aspect, the petition can be now supported as a supplemental bill for plenary relief and whether, however viewed, there was any error in dismissing it.

The brief filed by Respondents contains eight subdivisions. While to some extent the real issues are discussed in these subdivisions, the contentions raised in our main brief are not met directly or indirectly. Accordingly, Petitioner believes that he can be of most assistance to the Court by considering in turn each subdivision of the Respondents' brief and replying thereto. In addition, in order that the Court may have a clear picture of the proceedings had in the District Court, we have inserted as an APPENDIX to this Reply Brief a chronology showing the order in which the pleadings were filed and the various decrees entered.

REPLY TO POINT I OF RESPONDENTS' BRIEF.

Respondents urge that they did not attempt to have Lamb punished for criminal contempt, and that there-

fore our point that the order was non-appealable is not well taken. But it is manifest that the petition charged Lamb with contempt of some sort. The petition refers to "contumacious conduct"; the rule to show cause mentions an intent to "defraud this court". As we have shown in our main brief (pp. 12-17), it is obvious that Lamb did not commit a contempt of any sort, either civil or criminal. But on the question of appealability, the essential issue is what kind of contempt was *charged* in the petition. Respondents' theory in the District Court was that Lamb had defied the power, the dignity, and the authority of the court; and had brought it into disrespect by taking property out of its possession just as though he had seized securities in the court-room from the hands of the Judge. The theory was that Lamb's conduct amounted to a criminal contempt and Respondents sought to have him punished on that basis. Upon the actual facts, this was a poor theory, but it *was* the theory upon which the petition was predicated. The District Court found quite properly that there was no contempt of any sort, and discharged the rule and dismissed the petition. It is submitted that on the present record this was plainly a dismissal of a charge of criminal contempt, and therefore the order was not appealable.

As pointed out in our main brief, Respondents in the Circuit Court of Appeals stated that they would "agree with counsel that the Court was correct in dismissing the contempt charge." (R. 200) Respondents now disclaim this admission on the ground that it was merely a statement in "the brief of associate counsel," (p. 14) and that it was included in the record by petitioner. The statement in question, how-

ever, was made not in a brief but as part of the reply to Lamb's motion to dismiss the appeal, and was included in the record not by petitioner but by the Clerk of the court. Moreover, this admission in the court below embraced not only the charge of criminal contempt, if any, but also any possible charge of civil contempt.

As to the latter, it is somewhat difficult to discover whether Respondents have entirely abandoned the suggestion that the petition contemplated a charge of civil contempt. (See Respondents' brief, p. 14) Nowhere in their brief can there be found any exposition of their theory as to how the proceeding could be maintained as a contempt action, either civil or criminal, in view of the prohibitions contained in Section 268 of the Judicial Code. This is fully discussed in our main brief (pp. 12-17), where we have pointed out that the Court of Appeals was clearly in error in holding that Lamb's acts constituted a contempt of any sort.

REPLY TO RESPONDENTS' POINT II.

Although they have practically abandoned their contention that the petition charged a criminal contempt on the part of Lamb, and while it is impossible to discover whether they continue to argue that the petition charged civil contempt, Respondents now assert, in a *post hoc* endeavor to attribute validity to the pleading, that it was in reality a supplemental bill and that the District Court erred in dismissing it. This belated contention is most extraordinary in view of the fact that the only error alleged in the Court of Appeals was that the lower court had quashed the *service,* (R. 180) and in view of the basis

on which the Court of Appeals determined the case, namely, that the quashing of the *service* had been erroneous. (R. 208-209)

It is obvious that Respondents cannot now entirely disregard the allegations concerning contempt which they inserted in the petition and the order to show cause. Their present theory seems to be that they had filed in the lower Court a bifurcated pleading not only charging conduct punishable as contempt, but also containing allegations sufficient for a supplemental bill. We may examine the argument thus advanced, and ascertain whether even on this theory the lower Court erred in dismissing the petition and discharging the rule.

1. The very claim that it was a double-barrelled pleading should make us cautious. The objective in pleadings is definiteness and certainty. That would not be attained by a pleading which at the option of the pleader may be taken to mean two such dissimilar things as a petition for summary action by the Court and a bill in equity for general relief. They are entirely different in their nature and the complainant is required to proceed in a different manner.

2. To permit such uncertain and confusing pleading is unfair to a defendant. He does not know what he is called upon to meet. In this very case the belated argument of Respondents is that by pleading in this hybrid fashion they lured Lamb into a general appearance to a bill in equity for general relief. He *had* to answer the contempt charge, and in doing so, they say he became a party generally because the same petition contained two things. A method of pleading that can be used so unfairly ought not to be encouraged.

3. In fact they chose to treat it as a contempt proceeding. No subpoena was ever issued. But a rule to show cause, appropriate to that course of action, was issued, the case was heard, and the petition dismissed as in a contempt proceeding.

4. Respondents in filing the petition for contempt did not comply with the provisions of Equity Rule 34 relative to notice and application for leave to file a supplemental bill. The petition was filed as a summary proceeding, without notice to Lamb or any other parties therein named, and without application to the Court for leave to file it. In the absence of such notice and leave of Court, a supplemental bill cannot be regularly filed, and a refusal to allow it to stand is not reviewable. *Liebing v. Matthews,* 216 Fed. 1, 11-12.

5. If the petition is a supplemental bill, it is not a good one for the necessary jurisdictional requirements are lacking. Both Cramer and Lamb are citizens of Illinois (R. 1, 151) and thus the necessary complete diversity of citizenship for a plenary suit is lacking. See *Blake v. McKim,* 103 U. S. 336; *Hyde v. Ruble,* 104 U. S. 407; *Peninsular Iron Co. v. Stone,* 121 U. S. 631.

6. Lamb's position is that the record clearly indicates that at no time were the proceedings below regarded by either Court or parties as a supplemental bill. Respondents now insist that this bifurcated pleading should have been considered as a supplemental bill from the outset. It is perhaps indicative of Respondents' own point of view concerning this present contention that several months before the final hearing, and only nine days after the filing of the petition which Respondents now contend was a supplemental bill, they caused the Receiver to file a

separate bill in equity against Lamb for precisely the same relief. The inquiry naturally suggests itself as to why this was necessary if a plenary suit against Lamb had already, albeit rather peculiarly, been instituted.

7. The foregoing considerations demonstrate the unfairness and danger inherent in permitting such bifurcated pleadings to be interpreted at the will of a pleader. They commend the wisdom of the rule laid down by this Court in *In re Chiles*, 22 Wall. 157, 168, where this precise question was raised and the decision made that a prayer for general relief could not be appended to a petition to punish for contempt.

REPLY TO RESPONDENTS' POINT III.

In this section Respondents argue that no appeal was necessary from the final decree in the creditors' suit, and that it was not necessary in the present case to bring up the entire record in that suit. It is also urged that the decree of the District Court dismissing the petition and discharging the rule was a final decree and therefore appealable. We do not urge the point that the entire record in the original creditors' suit should have been brought up in the present appeal; for it is and has always been Lamb's position that the proceedings below were merely an attempt to have Lamb punished for contempt. Moreover, as we shall show later, if this petition can at any stage of the case be considered a supplemental bill, the bill itself was wholly defective and vague, and consequently, its dismissal was not erroneous. Thus the question as to whether or not the entire record in the Holland suit should have been brought up on appeal is immaterial.

REPLY TO RESPONDENTS' POINT IV.

This concerns the assignment of errors. On the appeal from the District Court to the Court of Appeals the only error assigned was error in "sustaining the motion to quash service of process." (R. 180) There was in fact no such order, but the Court of Appeals, misled by the assignment of error, dealt with the case on that basis. (R. 208-209) Respondents now argue that the Court of Appeals was not limited by the assignment of error but had a *right* to consider other questions. We do not deny that they had a right to consider other errors besides the one assigned. What we did say and what we say now is that the record clearly shows they did not, in fact, decide the case on any other basis.

REPLY TO RESPONDENTS' POINT V.

The Respondents contend that Lamb became a party to the cause generally by his voluntary actions which they enumerate:

(1) Allowing restraining order (R. 127) to be entered by consent, said restraining order enjoining defendant Florence T. Holland "either personally, or through her agent or attorneys."

(2) The insertion in the final decree of the reservation "William E. Lamb or Butler Lamb Foster & Pope not to be prejudiced hereby" (R. 146).

(3) Filing his answer to the contempt petition (R. 147-172; and.

(4) Agreeing that the hearing on the citation for contempt be continued to June 9 (R. 146-147).

See Respondents' Brief, pages 7-8 and 15.

We may consider each of these in turn.

1. The restraining order referred to above was entered against Mrs. Holland, the defendant in the creditors' suit. It was the first injunction order entered in that proceeding (R. 196). It was clearly directed solely against the defendant in that proceeding and the phrase "either personally, through her agent or attorneys" cannot possibly be given the meaning which Respondents seek to attach to it, of making all attorneys for Mrs. Holland, including Lamb, parties to the main cause.

2. As to the reservation in the decree there is nothing to show that Lamb appeared in Court on this point. The record is silent. In the companion case No. 433 there is an affidavit of Sam C. Cook, one of the attorneys for Respondents, in which it appears that:

> "Immediately after the rendition of the oral opinion rendered by the Court * * * continuous conferences were had between the attorneys representing opposing interests in said litigation, looking to the settlement of the same, *except that William E. Lamb was not present at any of said conferences* * * * said William E. Lamb was not present at any of said conferences, and so far as affiant had knowledge, he did not participate therein in any way.
>
> * * * *
>
> "When affiant presented the said final decree for the approval of the said Lamb, he was requested by said Lamb to insert in said decree a provision that same should be without prejudice to him or Butler, Lamb, Foster & Pope, stating that the decree, as originally drawn, contained such an exception as to the Planters Manufacturing Company, and further stating that he thought

that we should extend to him the same courtesy. This was agreed to (subject to the approval of his associates) by affiant, and the said provision was inserted in said decree, on the request of the said Lamb, by consent of all attorneys there present representing the plaintiff and interveners."

From the above it is clear that the reservation in the decree was not due to any request made by Lamb to the court, and therefore, it has no bearing upon the question whether Lamb entered a general appearance.

3. The order of continuance referred only to "the citation against Lamb". (R. 146-147.) It does not give the slightest indication that anyone considered that the hearing which was continued was a hearing on a supplemental bill in equity.

4. The special return filed by Lamb to the contempt charge is the principal item relied upon by Respondents to show that Lamb entered a general appearance. Respondents assert that Lamb's answer (R. 147-172) constituted a general appearance and an answer to the petition as a supplemental bill in equity.

The argument in support of Lamb's position on this point is at pages 20-23 of our original brief. Respondents' argument on the point is stated variously at pages 7-8, 15, 24-25, 34-35, 43 and 45 of their brief. The question must be decided by considering the situation in which Lamb was placed by the service upon him of the petition and citation for contempt, charging him with contumacious and contemptuous conduct and summarily ordering him to appear in Court on the following day; and by examining the answer which Lamb filed thereto. Faced with such charges, calling in question his professional

conduct and disparaging his reputation, he thought it essential to make a full and detailed answer to the allegations and to ask exoneration from the contempt charge. That he did and no more. It is evident that Lamb attempted and intended to limit his appearance to an answer to the contempt charges and we submit that the answer was a special appearance and not a general appearance and that it did not constitute an answer to a supplemental bill for general relief, even if the petition can now be so considered.

If this question of the nature and effect of the answer is decided in favor of Lamb's position, that completely disposes of the only contention seriously urged by respondents at this stage of the case. For even if the petition be considered of a dual nature, as a supplemental bill it stands without having been served upon Lamb or answered by him.

Respondents attempted by improperly joining a citation for contempt with a prayer for general relief to put Lamb in this dilemma: If he fully answered the citation for contempt, he would be faced with the claim that he had appeared generally in answer to the prayer for general relief. If, on the other hand, he attempted to avoid the danger of seeming to appear generally, he might answer the contempt charge so inadequately that he would fail to clear himself. Lamb *had* to answer the contempt charge, and it is not suggested how he could have guarded his appearance to that purpose any more completely than he did.

REPLY TO RESPONDENTS' POINTS VI, VII, AND VIII.

At the outset it should be noted once again that Respondents insist that the *service* of citation on

Lamb was quashed. This is not true and we do not contend that the service of the citation should be quashed.

Respondents have cited to the Court a large number of cases to show that under the law of Mississippi, the filing of a judgment creditor's bill creates an equitable lien upon the property of the defendant described in the bill and that all subsequent transferees *pendente lite* take subject to this lien. There is no need for us to discuss in detail these cases, most of which are only remotely in point; for we do not deny any of the propositions of law urged by the Respondents on this point. It is submitted that no matter how broadly or narrowly the rule of equitable liens or constructive possession, or property *in gremio legis,* be interpreted, at least two essential requisites (as set forth below) are lacking in the present petition, treating the latter as a supplemental bill.

The theory on which the Respondents assert Lamb's liability, is not based upon any improper or fraudulent conduct on his part. Their theory is that Mrs. Holland was a trustee; that her sole duty as trustee was to turn the property over to the *cestuis,* that is, to the creditors of Mr. Holland. Their theory is that as a trustee she had no right to pay any of the property to anybody else. Therefore, if anybody received from this trustee (Mrs. Holland) any of the trust property, even under the most creditable conditions, he could be compelled to return it to the trustee for transmission to the *cestuis.*

To be sure, scattered through their brief are occasional insinuations intended perhaps to color the picture slightly against Lamb, but there are no al-

legations of fact advanced by them from which any conclusion of improper conduct on Lamb's part could be drawn. The fees to a large extent were paid for his services in defeating a tax claim for over $600,000.00 which would have depleted the trust fund by that amount. There is no claim that the fees paid were excessive for the services rendered.

Therefore, despite occasional insinuations against Lamb's good faith, the sufficiency of this petition as a supplemental bill for full equitable relief, must rest upon the naked legal proposition that Mrs. Holland was a trustee of all her property from the time the creditors' bill was filed; that she could turn over portions of it to no one but the *cestuis,* that is, the creditors of Mr. Holland; and that anyone such as Lamb, who received any portion of her trust property, could be made to return it despite every element of good faith and valuable consideration.

Such a doctrine is a harsh one. We are therefore at liberty to point out to the Court the limitations on the doctrine and the respects in which this particular petition, regarded as a supplemental bill, falls short of stating the allegations which would be requisite to hold a defendant upon such a theory.

1. In order that an equitable lien may attach to property, it is essential that such property be specificially described in the bill.

> "To have that effect, a bill must be so definite in the description, that anyone reading it can learn thereby what property is intended to be made the subject of litigation."
>
> *Miller v. Sherry,* 69 U. S. 237, 250.

In the present case the original creditors' bill not only failed to describe all of Mrs. Holland's property

against which the claims were being asserted, but admitted that, with the exception of a few small parcels of real estate, such property could not be described. (R. 9-11, 19, 21, 27) The supplemental bill, if the petition may be so treated, did not predicate any cause of action upon fraud. The gravamen of the complaint was that Lamb had received in payment for legal services, the sufficiency of which was not questioned, property subject to the creditors' equitable lien arising by virtue of their having filed a suit. But inasmuch as Mrs. Holland's property subject to such lien was not properly described, either in the original bill or in the petition, no such lien could have existed. Consequently, the petition, even if it can at this stage be warped into a supplemental bill, did not on its face allege facts sufficient to state a cause of action.

2. It is elementary that in order for an equitable lien to attach by virtue of the mere filing of a creditor's bill, the property sought to be charged with such lien must be within the jurisdiction of the Court. With the exception of a few specific parcels of real estate (which not having been transferred to Lamb, are not here involved), neither the original creditors' bill nor the petition specifically alleged that properties transferred to Lamb had been within the jurisdiction of the Court. For this reason, also, the petition, if treated as a supplemental bill, was defective on its face and its dismissal was not improper.

Consequently, Petitioner contends finally that even if this Court should countenance Respondents' attempt to treat the petition as a supplemental bill,—that is, in a manner which neither Court nor parties ever remotely considered—the action of the District Court

in dismissing the petition and discharging the rule, was not improper because under the widest concept of the doctrine of equitable liens, that pleading failed to state a cause of action.

In concluding their brief, Respondents refer to an opinion of the Grievance Committee of the American Bar Association. (pp. 46-48.) This citation raises the question of the propriety of Lamb's professional conduct, and while that question is not presented at this stage of the proceeding, in reply to the charges against him, it is submitted that when the facts of record are examined, there cannot be the slightest doubt that his conduct was upright and honorable and in strict conformity with the highest standards of professional ethics.

Lamb was first employed to defend a claim of the Bureau of Internal Revenue for large amounts of income taxes proposed to be collected from Mrs. Holland. He successfully contested that claim, and brought about a large reduction in the amount demanded; and a closing agreement definitely fixing Mrs. Holland's liability for all taxes for the years 1916 to 1927 inclusive, was entered into pursuant to the Revenue Act of 1928. (R. 151-153.) For these services Mrs. Holland paid him the sum of $25,000.00 in fees, and reimbursed him for expenses incurred. (R. 157.) As a result of these services, Mrs. Holland's entire estate was saved from a serious depletion and such saving inured to the benefit of the Respondents when their claims against Mrs. Holland were thereafter established.

Beginning in December, 1928, Lamb was further employed to defend Mrs. Holland in the suits brought against her by the so called creditor banks, including

the suit instituted by Cramer, herein referred to by the District Court number as cause No. 129. (R. 155.) When Lamb entered into this employment, he was confronted by pleadings which presented claims against Mrs. Holland totalling only $132,151.05 (See original brief, page 27, footnote), and alleging that Mrs. Holland then held more than $2,000,000.00 of property which she had received from her husband in addition to a separate estate of undetermined amount, which was recognized as having been acquired from other sources. (R. 20, 27.) Under these circumstances, there appeared to be a large margin of property belonging to Mrs. Holland even if the creditors' claims should be established in full. In addition, Lamb defeated an intervention filed by the United States which claimed $681,163.40 for income taxes theretofore assessed against Mr. Holland. (R. 153-154.) His services in defeating this claim likewise inured to the benefit of the Respondents, as well as to Mrs. Holland. For services in defending these suits and other litigation in connection therewith, Mrs. Holland paid Lamb from time to time amounts totalling $35,000.00. (R. 157, 159.)

It was not until after all of these services had been performed and the payments made to Lamb, that other creditors succeeded in obtaining judgments against Mr. Holland totalling over $7,000,000.00 which were then presented by intervention in the Cramer suit. (R. 118, 196.) Until such interventions were filed, there was no basis whatever for any claim that such creditors had any lien upon Mrs. Holland's property or that there was any constructive trust in their favor. This is wholly unlike the situation described in the Grievance Committee opinion cited, where property received by the attorney consisted of real estate, specifi-

cally described and identified, and where the claim in litigation, if successful, would clearly embrace the entire property.

Under such circumstances it is submitted that the acceptance of reasonable fees for the performance of legal services to Mrs. Holland in these various matters cannot be made the subject of any just criticism.

It is respectfully submitted that for the reasons advanced in the foregoing brief, the decree of the Circuit Court of Appeals should be reversed, and the order of the District Court affirmed.

Respectfully submitted,

EDWARD B. BURLING,
EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

APPENDIX.

Chronology.

Creditor's bill by Cramer (R. 58).	July 23, 1928.
Services rendered by Lamb to Mrs. Holland in tax case (R. 151-153).	August 7, 1928, to November, 1929.
Attorney's fees paid to Lamb (R. 156-157; 196).	August 7, 1928, to December 16, 1929.
Other judgment creditors with claims over $7,000,000.00 intervened (R. 118).	April 17, 1930.
Petition to punish Lamb for contempt filed (R. 127).	April 21, 1930.
Rule to show cause served on Lamb (R. 131).	April 21, 1930.
To appear on (R. 129).	April 22, 1930.
Continued to (R. 147; 175-177).	April 30, 1930, and to June 9, 1930; and to July 29, 1930.
Receiver appointed (R. 133, 146).	April 30, 1930.
Injunction issued (R. 127).	April 22, 1930.
Final Decree on creditor's bill entered (R. 146).	April 30, 1930.
Receiver started suit against Lamb on (R. No. 432, p. 7).	April 30, 1930.
Order appealed from, discharging Lamb on contempt charge and dismissing petition (R. 177).	July 29, 1930.
Appeal filed (R. 177-180).	July 29, 1930.